

**CITY OF SHORELINE  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

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**APPELLANTS:** Port of Edmonds  
Town of Woodway

**FILE NO:** 96-01CP

**APPEALS:** Appeal of the Determination of Non-Significance for the City of Shoreline's Proposed Interim Policies to Guide Annexation Efforts

**INTRODUCTION:**

The Town of Woodway and Port of Edmonds have appealed the Determination of Non-Significance (DNS) issued by the City of Shoreline's Responsible Official associated with the City's proposed adoption of Interim Policies to Guide Annexation Efforts. The appeals were consolidated into a single hearing by the Hearing Examiner and no objection was raised by either of the appellants.

The appellants challenge the adequacy of the environmental analysis associated with policies A-16 through A-19 which deal with four geographic areas (See Map in Exhibit I: Summary of Pre-Hearing Conference by the Hearing Examiner): A-16. Point Wells area; A-17. Annexation Area A; A-18. Annexation Area B; and A-19. Annexation Area B-1. The primary area of concern to the appellants is the Point Wells area which is located within the Edmonds Port District and Snohomish County and is adjacent to the Town of Woodway.

The Town of Woodway and Port of Edmonds have stated that these policies are site-specific policies which constitute project actions under SEPA and therefore require project level detailed environmental analysis. They state that the checklist inappropriately limited its analysis to direct impacts and did not evaluate the cumulative impacts; and, therefore it is inadequate.

The City of Shoreline contends that the Interim Policies to Guide Annexation Efforts meet the definition of a non-project action; that the timing for conducting and content of detailed environmental analysis are more appropriate at the time the Comprehensive Plan is completed; and that it is appropriate to phase the environmental review.

**BACKGROUND:**

The City of Shoreline was incorporated in August 1995. At that time they adopted the existing King County Comprehensive Plan and Zoning Code. On the date of incorporation the City received two petitions for annexation which involve Areas A and B listed above. These areas

currently are either being appealed or are under discussion with the City of Lake Forest Park. Because of this early interest in annexation, the City felt it should adopt interim annexation policies during the time they are completing the update of the Comprehensive Plan.

The City of Shoreline is currently preparing its Comprehensive Plan under the provisions of the Growth Management Act, Chapter 36.70A RCW. It is projected to be done in 1997 or early 1998. An Environmental Impact Statement (EIS) evaluating the impacts of the Comprehensive Plan, including final annexation policies, will be conducted as part of this planning process.

## **HISTORY:**

The City of Shoreline is proposing to adopt Interim Policies to Guide Annexation Efforts while the new Comprehensive Plan is being prepared. The City determined that adoption of these interim policies were a "non-project" action (WAC 197-11-704 and 774). The following procedures were taken by the City's Responsible Official:

- Issued Determination of Non-Significance June 14, 1996
- Public Comment and Appeal Period June 16 - July 5, 1996
- Extended public review period at Appellant's request to: July 22, 1996

The sequence of the appeals and procedures of the Hearing Examiner prior to the Hearing are as follows (Exhibit Letters follow each item, when appropriate):

- Appeal submitted by Port of Edmonds (A) July 19, 1996
- Appeal submitted by Town of Woodway (B) July 19, 1996
- City Letter Requesting Clarification of Appeals (C) August 8, 1996
- Hearing Examiner Letter to Appellants (D) August 12, 1996
- Hearing Examiner Letter re: Pre-Hearing Conference (E) August 19, 1996
- Port of Edmonds Appeal Response (F) August 21, 1996
- Town of Woodway Appeal Response (G) August 21, 1996
- Pre-Hearing Conference, Shoreline Library August 27, 1996
- Response from Woodway to City on specific issues (L) August 28, 1996
- Hearing Examiner Summary of Conference (I) August 29, 1996

(Corrected to indicate revised sequence of testimony)

## **SUMMARY OF APPEALS:**

The Port of Edmonds and the Town of Woodway both filed appeals which focus primarily on the Point Wells area (Interim Policy A-16);. They also reference other site-specific areas identified in Policies A-17 through A-19. They contended that since these four policies are site-specific that they constitute project actions and thereby require project level, detailed SEPA analysis.

It was noted by the Town of Woodway that they have regarded the Point Wells area as an extension of the Town since the boundaries are contiguous. The area is designated in the Urban Growth Area for Snohomish County. The Port of Edmonds indicated that the Point Wells area is

within the Edmonds Port District and that their Master Plan identifies this site for future marina development.

In subsequent correspondence received from the Appellants the arguments were presented by the Town of Woodway and were essentially adopted by the Port of Edmonds. These expanded arguments covered the following points:

- Shoreline has not met its responsibility under WAC 197-11-055 to prepare its threshold determination and EIS at the earliest possible point.
- By including Point Wells it must perform a detailed checklist threshold determination or EIS on the proposed annexation, particularly where the annexation involves a change of land use (King County v Boundary Review Board 122Wn.2d 648, 860 P .2d 1024 (1993)).

In response to a request from the City to identify specific environmental issues which should be evaluated because of the adoption of the interim policies the Town of Woodway identified issues related to: Earth and Environmental Health; Water; Plants and Animals; Land and Shoreline Use; Recreation; Public Services. It was again stated that if these are not addressed for the Point Wells area, that the checklist is inadequate.

In response to the Legal Summary (Exhibit M) prepared by the City and submitted at the Public Hearing the Town of Woodway submitted comments (Exhibits N and O) as follows:

- Based on the testimony of the City of Shoreline's Planning Director that the contemplated action does not include annexation of the Point Wells site or any other land use or permit action it was requested that descriptive references to Point Wells be excluded so that it is clear that the proposed action covered by the checklist is non-project related to policies only.
- Phased SEPA review is not appropriate when the sequence is from a narrow project to a broad policy document. In addition, if the SEPA/GMA integration process was used, then the content and format is not consistent with regulations
- Evaluation of cumulative impacts is to be included in the review process, but is deferred for consideration until the SEPA review is performed on the Comprehensive Plan.
- Although the Visioning Report (Exhibit K) is not adopted, it is a required element under GMA and the City is claiming to use an integrated SEPA/GMA process.

The appeals request that the document be remanded for further consideration by the Responsible Official of the City of Shoreline.

## **PUBLIC HEARING:**

On August 29, 1996, the Hearing Examiner held an open record public hearing on the appeals from the Town of Woodway and Port of Edmonds. The hearing was opened at 7:00 p.m. in the Mount Rainier Room of the Shoreline Conference Center and was closed at 8:30 p.m. The hearing was held open until September 11, 1996 to allow time for the Appellants to respond to the Legal Summary submitted by the City of Shoreline at the public hearing and for the City to respond to the comments of the Appellant. Participants at the public hearing and the exhibits

offered and accepted are listed in this record. A verbatim recording of the hearing and the file of hearing exhibits is available for public inspection in the City Clerk's office

At the beginning of the public hearing the Hearing Examiner noted the nature of the appeal and that a pre-hearing conference had been held involving all parties on August 27, 1996. He reviewed the rules of procedure for the hearing.

Testimony was offered at the public hearing by the Planning and Community Development Department and Interim City Attorney, City of Shoreline, the Town of Woodway, the Port of Edmonds and several citizens. Testimony was taken under oath. One letter was received opposing the potential to annex the Point Wells area because of its impact on the Town of Woodway. Testimony which was offered at the hearing is summarized in the following:

- Lenora Blauman, Planner, Planning and Community Development, City of Shoreline, presented the staff report. She noted that:
  - These are interim policies, there are no specific ordinances, projects, etc.;
  - Policy is by definition a non-project action under SEPA;
  - The timing of the environmental review is at the earliest possible time and since it is a policy it is not possible to identify specific impacts;
  - The City is committed to do an Environmental Impact Statement on the Comprehensive Plan which will include the final policies on annexation; and
  - Phasing of the environmental review is appropriate for a non-project policy document.

- Mike Jauhola, Engineer and Responsible Official, Town of Woodway, referenced the Town's previous letters and noted that the environmental review done by the City must consider both the direct and indirect impacts of the action; should show the cumulative impact of the actions and that by not doing this detailed analysis that it rendered the environmental review inadequate. He noted that phased environmental review is not appropriate when going from a narrow project to a broad policy. He also referenced the Visioning Summary which defined potential uses for Point Wells.

- Bruce Jones, Attorney, Town of Woodway, repeated their position that identifying geographic areas moves this from being a non-project action to a project action which requires additional environmental analysis. He noted that the City's process could avoid later SEPA examination because annexations are now SEPA exempt. He maintained that the Visioning Summary and Comprehensive Plan Advisory reports identify potential uses which could be evaluated.

- Walt Sellars, Attorney, Port of Edmonds, noted that additional environmental analysis should be made because this is a project action which identifies the Point Wells area. He noted that Point Wells is within the Edmonds Port District and that they have an overall Master Plan which already includes this area. He concurred with the citations presented by the Town of Woodway.

- Mary Lynne Myer, Responsible Official, City of Shoreline, noted that some of the questions raised about Point Wells had already been considered by Snohomish County which had done an EIS and had included the Point Wells area within their Urban Growth Area. She also noted that the Visioning Summary and first Comprehensive Plan Advisory Committee report were very preliminary in nature - simply getting a lot of ideas out for discussion. She noted that as the Responsible Official she had reviewed SEPA requirements carefully and had concluded that there was no significant adverse environmental impact by adopting these interim policies and that it was not a project action. She noted that there is an absence of information to make detailed evaluation and that you must be able to make conclusions based on probable impacts not speculation. She noted that substantial weight must be given to the decision of the Responsible Official and that the burden of proof is on the appellant.

- Janet Garrow, Interim City Attorney, City of Shoreline, noted in response to the Town of Woodway's letter of August 28th that there are no specific proposals against which to evaluate any of the items identified in the letter. She noted that the 1993 *King County v Boundary Review Board* case which was cited is significantly different and that the issue is somewhat moot since SEPA legislation related to annexations was modified in 1994. She noted that the City had carefully considered the environmental regulations and that no evidence had been submitted by the Appellants which would indicate that any significant probable environmental impact would occur by the action of adopting these Interim Annexation Policies. She submitted a Legal Summary (Exhibit M).

- Mickie Gau, resident, noted that the Richmond Beach area suffered due to the traffic created by Chevron at Point Wells. She did not feel it was fair that the citizens of Shoreline had to pay for upkeep on roads and other problems caused by them.

- Dan Kuhn, Member, Planning Commission, City of Shoreline, testified that the Visioning Summary and Advisory Committee reports are preliminary working documents subject to change. He noted that there is no development proposed and that it would be foolish of the City not to evaluate potential areas for annexation.

- Chakorn Phisuthikul, resident, noted that he lived in Richmond Beach and that he was surprised that this appeal appears to be over procedural policy. He stated that it appeared to him that no action was being proposed and that the simple action of potentially changing ownership would not change the environmental situation at all.

No additional testimony was offered. In order to allow response to the Legal Summary submitted by the Interim City Attorney (Exhibit M), the Hearing Examiner held the record open until September 11th to receive comments from the Appellants and any additional response from the City.

After reviewing the appeals and supporting letters, the staff report with attachments, the Legal Summary and the public testimony submitted in writing and by witnesses at the public hearing, the Hearing Examiner hereby enters the following Findings and Conclusions:

## **I. FINDINGS:**

A. The primary issue related to these appeals is whether the inclusion of site specific areas such as Point Wells in the Interim Policies to Guide Annexation Efforts made adoption of those Comprehensive Plan policies a project action requiring additional environmental review.

B. SEPA mandates that the environmental determination by a governmental agency “shall be accorded substantial weight” (RCW 43.21C.090).

C. The Court’s decision in *King County v Boundary Review Board* is not applicable to this situation particularly with the subsequent legislative action in 1994.

D. The consideration of these Interim Comprehensive Plan Policies to Guide Annexation Efforts including those which identify site-specific areas as “non-project” actions is consistent with the definition of non-project action in the SEPA Rules (WAC 197-11-704)

E. The argument that a phased environmental review is not appropriate when the sequence is from a narrow project to a broad policy document is not valid in this situation because these are Comprehensive Plan policies and are themselves a portion of the Interim Comprehensive Plan.

## **II. CONCLUSIONS:**

A. The burden is on the Appellants to overcome the substantial weight that must be given to the decision of the Responsible Official in issuing a Declaration of Non-Significance.

B. The Appellants have failed to establish that the consideration of these Interim Policies to Guide Annexation Efforts as a non-project action and to phase the environmental review is in conflict with SEPA Rules.

C. The Appellants have failed to provide substantive information showing that the Responsible Official did not adequately consider the environmental factors associated with the proposed non-project action.

D. The Appellants have not provided analysis or information that indicates that the adoption of the Interim Policies will result in a probable significant adverse impact on the environment.

## **III. DECISION:**

Based on the foregoing findings of fact and conclusions, the appeal of the Town of Woodway and the appeal of the Port of Edmonds are denied. The issuance of a Declaration of Non-Significance for the Interim Comprehensive Plan Policies to Guide Annexation Efforts by the Responsible Official is affirmed.

**EXHIBITS:**

- A. Appeal from Port of Edmonds, filed with City Clerk on July 19, 1996, dated July 10, 1996
- B. Appeal from Town of Woodway, filed with city clerk on July 19, 1996, dated July 19, 1996
- C. Letter from Mary Lynne Myer, Responsible SEPA Official, City of Shoreline, dated August 8, 1996
- D. Letter from Robert G. Burke, Hearing Examiner, City of Shoreline, dated August 8, 1996
- E. Letter from Robert G. Burke, Hearing Examiner, City of Shoreline, dated August 19, 1996
- F. Letter from Walter C. Sellers, attorney representing Port of Edmonds, dated August 21, 1996
- G. Letter from Michael Jauhola, Responsible SEPA Official, Town of Woodway (Not dated, received on August 21, 1996)
- H. Staff Report to the Hearing Examiner, Planning and Community Development, City of Shoreline, not dated, received on August 28, 1996
- I. Summary of Pre-Hearing Conference (August 27, 1996), Robert G. Burke, Hearing Examiner, City of Shoreline, dated August 29, 1996. Includes two Pre-Hearing Conference Attachments: Map of Potential Annexation Areas to the City of Shoreline and Letter from Ross J. Wood, Mayor of Woodway, dated August 1, 1996
- J. Comprehensive Plan Advisory Committee (Kick Off Summary) Planning and Community Development, City of Shoreline, dated April 27, 1996
- K. Visioning Workshops (Summary Report), Shoreline City Council, City of Shoreline, dated February 29, 1996 to March 2, 1996
- L. Letter from Bruce E. Jones, attorney for Town of Woodway, dated August 28, 1996
- M. Legal Summary from Janet Garrow, attorney for the City of Shoreline, not dated, received August 29, 1996
- N. Letter from Bruce E. Jones, attorney for Town of Woodway, dated September 4, 1996
- O. Letter from Janet Garrow, attorney for City of Shoreline, dated September 6, 1996

**PARTIES OF RECORD:**

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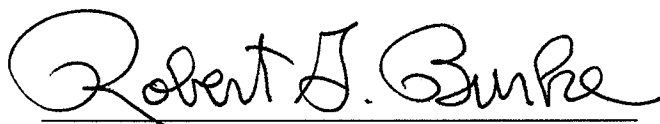
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**Entered this 25th day of September, 1996. The decision of the Hearing Examiner shall be the final decision on an appeal of a Determination of Non-Significance.**

A handwritten signature in black ink that reads "Robert G. Burke". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Robert G. Burke, Hearing Examiner

**APPEAL:**

An appeal of the Hearing Examiner's decision is governed by RCW 43.21C.075, the appeal section of SEPA statutes. Under this provision an appeal of the environmental determination must be combined with an appeal of the underlying governmental action.